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UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
NORTHERN DIVISION

SIOUX RURAL WATER SYSTEM, INC., * 1:15-CV-01023-CBK
A NON-PROFIT CORPORATION, *

Plaintiff, *

vs. *

CITY OF WATERTOWN, A SOUTH *
DAKOTA MUNICIPALITY; AND *
WATERTOWN MUNICIPAL UTILITIES, *
AN AGENCY OF THE CITY OF *
WATERTOWN, *

Defendants. *

D E P O S I T I O N
O F

DARWIN MACK

February 16, 2016

12:20 o'clock, p.m.

Taken at:
Offices of Watertown Municipal Utilities
901 Fourth Avenue SW
Watertown, South Dakota

Reporter: Tammy Stolle, RPR

EXHIBIT

tabbles

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1 federal law." Did you read that?

2 **A. I probably browsed it, yeah.**

3 **Q.** Okay. Well, does that -- do you recall now

4 Attorney Boyd at the meeting making that statement?

5 **A. He probably did. That's been a --**

6 **Q.** Okay. Do you know, does that help you recall any

7 other conversations about that issue?

8 **A. No.**

9 **Q.** Okay. I'm also going to show you documents that

10 are marked Sioux 546 through Sioux 551, and what it is an

11 e-mail chain between Todd Boyd and Stan Fox. So if you start

12 at 551 and move your way forward to 556, I believe you'll get

13 it chronologically.

14 **A. (Witness reviewing document.)**

15 MR. HIEB: Let's go off the record.

16 (Off-the-record discussion.)

17 **Q.** (BY MR. HIEB) Have you had a chance to read the

18 final e-mail in that chain at the very top of 546?

19 **A. Here?**

20 **Q.** Right.

21 **A. Yes.**

22 **Q.** Okay. Other than Mr. Cole's representation of

23 you in this lawsuit, has any attorney other than Todd Boyd

24 represented Sioux since you've been on the board?

25 **A. Not since I've been on, no.**

36

1 **Q.** Has Mr. Boyd been Sioux's attorney during your

2 tenure on the board?

3 **A. Yes.**

4 **Q.** Page 546 is an e-mail that indicates -- it comes

5 from Todd Boyd. It's being sent to Stan Fox who represents

6 Watertown Municipal Utilities and it says, "Stanton, Sioux

7 Rural Water makes no claim for the water service to the new

8 Titan building." Did you know that Mr. Boyd had sent that

9 e-mail to Mr. Fox?

10 **A. We direct a lot of things to Todd.**

11 **Q.** Sure.

12 **A. And what he does with it, I mean --**

13 **Q.** Okay. And what, I guess, I'm asking you is, were

14 you aware that Mr. Boyd was telling Mr. Fox that Sioux's not

15 making any claim to the water service at the new Titan

16 building?

17 **A. I was aware they had discussions, so...**

18 **Q.** Okay. Well, I guess my question would be, and

19 this is how I read it, the way I read it is that Todd Boyd is

20 on behalf of Sioux telling Stan Fox, "We're not making any

21 claim to the water service at the new Titan building." Did

22 you know anything about that?

23 **A. If he did, he did.**

24 **Q.** Okay.

25 **A. It's just the way it is.**

37

1 **Q.** Do you know why Sioux was making no claim to

2 water service at the new Titan building?

3 MR. COLE: Object to form.

4 **A. I mean, there's all legal stuff to that. I mean,**

5 **that is --**

6 **Q.** (BY MR. HIEB) I didn't know if it was legal. I

7 didn't know if it's a situation where the board said, "We

8 can't supply that kind of water, those amounts." If the

9 board said, "We don't want to screw around with it." Was

10 there some direction the board gave Todd to your knowledge?

11 **A. No, to my knowledge -- I mean, it just might have**

12 **been a deal, you know, just depart and move on.**

13 **Q.** Okay. So you really don't know what caused Todd

14 Boyd to give that information to Stan Fox in this e-mail?

15 **A. He might have had direction, but what all got**

16 **discussed, I mean that's been a while. I'm not going to --**

17 **Q.** That's fair. But when we're looking at that

18 e-mail on 546 that talks about the new Titan building, that's

19 the same hookup that you were referencing when you talked

20 about the Boerger farm?

21 **A. Well, the area.**

22 **Q.** Okay.

23 **A. I mean, just -- you said a general area east.**

24 **That's a general area.**

25 **Q.** Right. And you said in that area you were aware

38

1 of Titan and Lew's, right?

2 **A. Yeah.**

3 **Q.** Any other customers of Sioux that you're aware of

4 in that area, as you sit here today, that were taken by the

5 City of Watertown?

6 **A. Oh, I think that new auction place out there east**

7 **as well.**

8 **Q.** Do you know the name of it?

9 **A. I think it's -- no, not offhand. I mean --**

10 **Q.** Okay. But in reference to Titan --

11 **A. It's a new business out there just east of Titan**

12 **Machinery.**

13 **Q.** It's an auction business?

14 **A. I believe so.**

15 **Q.** And that was a business that was previously

16 served by Sioux?

17 **A. I believe so.**

18 **Q.** Okay. But in terms of Titan, for instance, you

19 would agree with me that the e-mail we just looked at relates

20 to what was the Boerger farm and is now the Titan facility?

21 **A. Correct.**

22 **Q.** And with respect to Lew's Fireworks, which is the

23 other business that you previously could recall being east of

24 town that was previously served by Sioux that is now served

25 by Watertown Municipal Utilities, do you recall any